The Banks next sought review by the Florida Supreme Court, which denied certiorari (123 So.(2d) 349) and then petitioned this Court, unsuccessfully, for certiorari (365 U.S. 811, 5 L.Ed.(2) 691, 81 S.Ct. 690).

When the mandate was received back in the Florida trial court, the Banks then objected to the jurisdiction of the Florida State Court to enter a judgment pursuant to the mandate, and contended that the Bankruptcy Court was without jurisdiction to permit the continuation of the State Court proceedings. The Florida trial court denied the objection; the Florida appellate court quashed an appeal therefrom (132 So.(2d) 806); the Florida Supreme Court denied certiorari (133 So.(2d) 319) and so did this Court (369 U.S. 810, 7 L.Ed.(2) 612, 82 S. Ct. 687).

To correct inaccuracies in the Statement filed by Petitioners, this Respondent states that the Circuit Court of Dade County, Florida, in its final Judgment entered on the Mandate of the Florida District Court of Appeal on April 14, 1961, did not wipe out the principal of the National Bank's claim, but on the contrary, adjudged that Constructors of Florida, Inc. was indebted to the National Bank in the amount of $11,271.20, being the portion of the unpaid principal not participated by the National Bank to the State Bank (R. 202, 204). The affirmative damages awarded against the National Bank were in the sum of $74,867.52 (R. 203). This amount was equal to double the usurious interest collected by the National Bank, as provided by 12 U.S.C. Sec. 86. (R. 359)

Meanwhile, in January, 1959, the Bankruptcy Court in the proceedings administering the debtor-mortgagor,

had ordered its Trustee to continue the State Court litigation (R. 70-74). The Petitioners-Banks did not object to this order nor have they ever questioned its propriety. Further, the Petitioners-Banks expressly consented to the mortgagor's Plan of Reorganization, subsequently confirmed, and substantially consummated, which expressly provided for the continuation, to completion, of the Banks' foreclosure action and the usury counterclaim against the Banks (R. 30, 32-35, 48-51, 106, 107-118, 119-127).

On February 26, 1962, the United States Court of Appeals, Fifth Circuit, in a decision reported at 299 F(2) 726 affirmed an order of the Bankruptcy Court which denied Petitioners' application to enjoin further proceedings in the State Court and to transfer the proceedings to the Bankruptcy Court. No appeal was taken by Petitioners from that decision.

Thereafter, the Reorganization Judge, on considering the Trustee's objections to the Bank's claim filed in the Reorganization Proceedings, held that the State Court decision in connection therewith was final and binding, except insofar as it denied enforcement of non-usurious mortgages on the ground the Banks sought the aid of the State Court of equity with unclean hands (R. 411-429). The effect of this decision was to revitalize the Bank's lien, under two of its three mortgages, against the proceeds of sale of the personalty encumbered by the mortgages.

The Court of Appeals for the Fifth Circuit, in the opinion sought to be reviewed, reversed the Reorganization Judge's Order insofar as it disregarded this phase of the State Court decision, and held the State Court

decision was res adjudicata on the issue of "unclean hands" and the unenforceability of the two other mortgages, as well as on the issue of the jurisdiction of the State Court to entertain the usury Counterclaim. No stay of the Mandate was requested, and the Reorganization Judge has entered a Judgment on the Mandate, as of September 21, 1965 (App. "A" hereto).

No supersedeas has been filed or stay obtained by the Petitioners from the operation of this Judgment, nor did Petitioners appeal from this Judgment and the appeal period therefrom has expired. The conclusion of the Reorganization Proceedings, delayed six years by the Banks' successive appeals, is in order.

REASONS FOR DENYING THE WRIT

This Respondent respectfully submits that the Petition should be denied for the following reasons:

1. The decision below is correct, in accordance with the law and the decisions of this Court. It is firmly established that a State Court judgment, determining the State Court to have jurisdiction over the subject matter of the litigation, when entered after a contest as to the issue of jurisdiction, is conclusive between the parties and their privies in a subsequent Federal Court action. **Forsyth v. Hammond, 166 U.S. 506, 41 L.Ed. 1095, 17 S.C. 665 (1897); Stoll v. Gottlieb, 305 U.S. 165, 83 L.Ed. 104, 59 S.C. 134 (1933); Durfee v. Duke, 375 U.S. 106; 11 L.Ed. (2) 186, 84 S.C. 242 (1963).**

2. Petitioners fail to show, as required by Rule 19 of the

Rules of this Court any "special and important reasons" why this Court should grant the review sought.

3. Petitioners fail to show that the Court below erred, in holding that the State Court Judgment is res adjudicata as to the issues there litigated and determined.

4. Petitioners likewise fail to show why they are not bound, as creditors, by the provisions of the Plan of Reorganization that they approved and accepted and which was confirmed with their consent, the terms of which expressly provided for the continuation, in the State Court, of the litigation which Petitioners had instituted there. We submit Petitioners are bound. 11 U.S.C. 624(1).

5. Petitioners, in relying on late decisions of this Court such as **Michigan National Bank v. Robertson** (1963) 372 U.S. 591, 83 S.Ct. 914, 9 L.Ed. (2d) 961, and **Mercantile National Bank v. Langdeau** (1963) 371 U.S. 555, 83 S.Ct. 520, 9 L.Ed. (2d) 523, seek to equate the Petitioner National Bank's position with that of a National Bank with a venue privilege under 12 U.S.C. § 94, sought to be abridged by a State Court invoking a conflicting state venue statute, and ignore the fact that Petitioner National Bank, with a choice of forums, and a right to resort to the Federal District Court to institute its action, elected to enter the State Court in the county of the Bank's residence, and had no venue privilege in such circumstances, but even if it had such privilege, waived it by the choice of forum. Furthermore, Petitioners, by filing their action in the State Court, submitted themselves to the jurisdiction of the State Court with respect to all the issues embraced in the suit, including those pertaining to the counterclaims of the defendants. (**Leman, et al. v. Krentler-**

Arnold Hinge Last Co. (1932), 284 U.S. 448; 76 L.Ed. 389, 52 S.Ct. 238; General Electric Co. et al. v. Marvel Rare Metals Co., et al. (1932), 287 U.S. 430, 77 L.Ed. 408, 53 S.Ct. 202.

6. The jurisdiction of this Court has not been properly invoked. Although Petitioners attempt to invoke the jurisdiction of this Court under 11 U.S.C., Section 47, and purport to request this Court to review an allegedly erroneous decision of the United States Circuit Court of Appeal, the questions presented by the Petition, and the argument advanced by Petitioners show that Petitioners again seek to have this Court review the judgment of the Florida State Court that was entered on April 14, 1961, and which Petitioners heretofore twice unsuccessfully petitioned this Court to review, under 28 U.S.C. 1257(3). (365 U.S. 811, 81 S.Ct. 690, 5 L.Ed. (2) 691; 369 U.S. 813, 82 S.Ct. 687, 7 L.Ed. (2) 612).

7. Petitioners have not been deprived of any rights under the Federal Constitution. They have lost a lawsuit, have availed themselves of every avenue of appeal, to this Court twice, unsuccessfully, and now seek for a third time to have this Court review the adverse decision. The Petition alleges, as a conclusion, that the Decision under review deprived the National Bank of lien rights by recognizing, as conclusive against the National Bank, the State Court adjudication that two of the mortgages the Petitioners sought to foreclose are unenforceable.

This contention ignores the fact that the confirmed Plan of Reorganization provides that whether or not claims shall be considered secured, and the relative priority of claims, shall be dependent upon the final outcome of the

Bank litigation which was to be concluded in the State Court.

8. Petitioners, with the burden under Rule 19 of this Court's Rules, have failed to show the decision in question involved importance to the public, presented a real and embarrassing conflict of opinion and authority between Courts of Appeal, or presented a constitutional question.

CONCLUSION

It is respectfully submitted that the Petition for Writ of Certiroari should be denied.

Respectfully submitted,

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